have retired, the individual and independent opinion of each assessor.

Mr. Storr contends that it is impossible to obtain from an assessor an individual or independent opinion after he has had the opportunity of consulting and discussing the matter with his brother assessor. We do not agree. It seems to us that very often it may [184] be advantageous and [184] even desirable that assessors should have the opportunity of discussing the matter with one another. Often one of the assessors is of one nationality and the other of another, and one of them being of the same race as a witness may be better able to appreciate some passage in his evidence than the other assessor who belongs to a different race. It is moreover a common experience in these Courts to find that notwithstanding the fact that assessors have retired they deliver differing opinions as to the guilt or innocence of the accused.

The second point which Mr. Storr took was that there is nothing in section 197 empowering the Judge in the course of his summing up to express his opinions upon any particular part of the evidence. Undoubtedly in this case the learned trial Judge in the course of his summing up did express his individual opinion on certain parts of the evidence.

The section says: "The Court may sum up the evidence for the prosecution and the defence"; that is all the section says with regard to summing up. We are of opinion that when the section says the Court may sum up the evidence for the prosecution and the defence, that must also give the Judge power to express his opinion on any part of the evidence, provided that he makes it quite clear to the assessors that they are not to be influenced unduly by his opinion on any particular point of the evidence, that they are, each and individually, to come to their own personal conclusion as to each part of the evidence, and that if either of them differs from the Judge in the view which he has expressed as to any part of the evidence, it is the view of the assessor which should prevail and not that of the Judge.

The learned trial Judge put this very clearly to the assessors, and I think that they cannot have failed to realise that if they differed from him in any opinion which he expressed it was their opinion which was required. What he said was this —

> "On the question of fact, you alone are the judges in determining your own verdict. If in going through the evidence I express my own opinion as to the credibility of the witnesses, or on any fact, you are not in any way bound to follow my view. You must decide for yourself. It is only on the question of law that you are bound to accept what I tell you."

It seems to the Court that this was a full and very proper direction to the assessor on this particular point, and provided that a direction such as this is given to the assessors, it seems to us eminently proper that, when he thinks fit, the trial Judge should express his own opinion on any question of fact.

The other grounds upon which this appeal is based are directed to certain matters of procedure and to certain alleged misdirections on the evidence contained in the summing up by the learned trial Judge. The Court is of opinion that none of these alleged misdirections were such as would entitle the Court to interfere with the verdict of the Court below.

It has been laid down in England in a number of cases (the leading case being *R.* v. *Max Cohen and Leonard Nelson Bateman,* 2 Cr. App. R. 197), that a misdirection as to evidence, to be of any avail to the appellant, must be such that it is reasonably probable that the jury would not have returned the verdict that they did, had it not been for such misdirections. The same principle is applicable to the opinion of an assessor in this country.

One last point remains upon which the Court should, we think, express its opinion, and that is on the question of the learned trial Judge having recalled the Police Inspector to rebut certain statements made by the accused in the course of his evidence as to what took place in the proceedings in the Magistrate's Court. It seems to us that the learned trial Judge acted quite properly and was within his rights in doing as he did and that no adverse criticism can be directed against him as to his conduct at the trial in that particular respect.

I am reminded by my brothor Howes that criticism was also directed against the learned Judge's summing up as regards what he said on the question of *alibi.* We are of opinion that the learned Judge was entitled to draw the attention of the assessors to the fact that the *alibi* had not been set up at the earliest possible moment especially as in so doing he added, "I do not want you to draw any inference unfavourable to the accused from the fact that he did not raise the *alibi* at the preliminary enquiry or to think that it must necessarily mean that he is untruthful." We are unable to see that the way in which the learned Judge dealt with this matter in the summing up was in any way unfair to the appellant or that this can be held to amount to a misdirection.

For these reasons, although we appreciate the able and careful way in which Mr. Storr, for the appellant, argued his points before us, we are of opinion that there is no substance in them, and that this appeal must be dismissed.

Howes and **Aitken JJ.** concurred.

Appeal dismissed.

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[185] JOHORE REPORTS [185]

IN THE MATTER OF SECTION 22 OF THE LAND ENACTMENT
THE COLLECTOR OF LAND REVENUE, KLUANG v. SOMASUNDARAM CHETTIAR & ANOR.

[O.C.J. (Mills J.) June 16, 1936]
[Johore Bahru Land Reference No. 1 of 1936]

Land registration — Transfer of charge — Johore Land Enactment, No. 1 (Revised Edition), s.47.

A transfer of a charge on land held by Entry in the Mukim Register under Part III of the Land Enactment is not registrable under this Enactment.

Obiter, the Commissioner should refuse to register any transactions other than those for which express provision is made in Part V of the Enactment.

REFERENCE by the Collector of Land Revenue, Kluang, under the provisions of section 22 of the Land Enactment. The matter came on before Mr. Justice Mills in Chambers on April 14, 1936.

L. R. F. Earn (Collector of Land Revenue, Kluang) in person.

M. Ismail for K.R.P.R.K.P.L.S.M. Somasundaram Chettiar, 1st respondent

The second respondent did not appear.

Mills J.: The Court is asked to decide whether a transfer of a charge on land held by Entry in the Mukim Register under Part III of the Land Enactment may be registered.

The key appears to me to be found in section 47.

This section provides, as regards lands held under Part III, that "no interest.....shall be valid unless it has been registered.....in accordance with the provisions of this Enactment."

A transfer of a charge purports to create an interest in land.

This interest will be valid only if the transfer of the charge is registered in accordance with the provisions of the Land Enactment.

But the Enactment contains no provision for the registration of a transfer of a charge.

Therefore a transfer of a charge cannot create a valid interest in land.

It is true that the Enactment does not expressly prohibit the Collector from registering a transfer of a charge: but if the Collector were to register it, his act would be a nullity because such registration would not be "in accordance with the provisions of this Enactment." It is absurd to suppose that in an Enactment designed to clothe transactions with legal validity by registration, the Legislature could have intended to empower the Collector to make registrations which have no legal effect at all. There is a presumption against absurdity.

I conclude, therefore, that the Legislature intended that the Collector should register instruments in accordance with the provisions of the Land Enactment and not otherwise.

The answer to the question submitted to the Court is that a transfer of a charge on land held by Entry in the Mukim Register under Part III of the Land Enactment, cannot be registered.

It necessarily follows that the Collector should refuse to register any transactions other than those for which express provision is made in Part III of the Enactment: for instance, the Collector should refuse to register a lease.

On viewing the Land Enactment as a whole, on comparing its various sections and Schedules *inter se*, and on considering the provisions of the Mining Enactment, I feel some confidence in expressing the *obiter dictum* that the Commissioner should refuse to register any transactions other than those for which express provision is made in Part V of the Enactment: for instance, he should refuse to register a transfer of an easement: but this question has not been argued and I am open to be convinced that this *obiter dictum* is incorrect.

Order accordingly.

Solicitor for the 1st respondent — *M. Ismail.*

CHIA TECK LIANG v. TAN SOO KHIANG

[A.C.J. (Mills J.) June 17, 1936]
[Johore Bahru Civil Appeal No. 2 of 1936]

Practice — Judgment against administrator before grant issued — Validity of — Probate and Administration Enactment, s.70.

When a Court makes an order that letters of administration should issue to the petitioner, such an order does not constitute a "grant" within section 70 of the Probate and Administration Enactment.

An administrator cannot be sued in respect of a debt due by a deceased person, until letters of administration have been granted under seal.

MAGISTRATE'S CIVIL APPEAL.

[186] This is an appeal from a judgment for [186]
$254.81 and costs given by the Magistrate at Kota Tinggi in favour of the respondent on February 25, 1936 in Kota Tinggi Civil Suit No. 15 of 1936. The facts appear sufficiently from the judgment.

Das for the appellant.

S. B. Tan for the respondent.

Cur. Adv. Vult.

Mills J.: In this suit the Magistrate gave judgment for the plaintiff-respondent.

The appellant appealed on the ground, *inter alia*, that he was not the administrator of the estate.

I upheld the appellant's contention and allowed the appeal.

The respondent alleged in his plaint that the defendant was the administrator of the estate and testified in Court that letters of administration had been granted to the appellant.

It appeared from the Court records that the Assistant Registrar had made an order that letters of administration should issue to the appellant but that letters had not been granted under seal in the form prescribed in section 70 of the Probate and Administration Enactment.

Two questions arose for decision:—

(1) did the order of the Assistant Registrar constitute a "grant"?

(2) if not, could the appellant be sued as administrator before the Court had made the "grant"?

As to the first question: I admit I have some difficulty in construing section 70 of the Probate and Administration Enactment, but even if it contains an irreconcilable contradiction, the Court must hold, in my opinion, that the overriding words are "grant the same under its seal": it is quite clear that when the Judge makes an order on the Bench to the effect that letters of administration shall issue to the petitioner, he does not make a grant under seal: consequently